



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

(FSME-11-029, April, Program, NSTS Requirements)

April 11, 2011

ALL AGREEMENT STATES, MICHIGAN

U.S. NUCLEAR REGULATORY COMMISSION NOTIFICATION OF ISSUANCE OF ENFORCEMENT GUIDANCE MEMORANDUM-09-007, REVISION 2, "INTERIM GUIDANCE FOR DISPOSITIONING VIOLATIONS OF NATIONAL SOURCE TRACKING SYSTEM REQUIREMENTS" (FSME-11-029)

Purpose: On March 2, 2011, the U.S. Nuclear Regulatory Commission (NRC) issued the enclosed revised enforcement guidance memorandum (EGM) for use as guidance in dispositioning violations of the National Source Tracking System (NSTS) requirements in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 20.2207, dated November 2006. This letter is intended to inform all Agreement States of this action. No action or response on the part of the Agreement States is requested or required. The Agreement States may choose to take similar actions.

Background: The President signed the Energy Policy Act of 2005 into law on August 8, 2005. The statute contains a national source tracking provision which required the NRC to issue regulations establishing a mandatory tracking system for radiation sources in the United States. In response to that mandate, the NSTS was developed through close cooperation with other Federal and State agencies to enhance the accountability of radioactive sources. The Energy Policy Act of 2005 states Category 1 and Category 2 sources are to be included in the NSTS. The radionuclides and thresholds are identical to the Table I values from the International Atomic Energy Agency *Code of Conduct* and are located in Appendix E to Part 20. The NRC also expanded the list of nationally tracked sources by adding four additional radionuclides (Actinium-227, Polonium-210, Thorium-228, and Thorium-229). The NRC published the Final Rule incorporating the NSTS into the agency's regulations on November 8, 2006 (71 FR 65707, as amended at 72 FR 59163, October 19, 2007), set forth in 10 CFR 20.2207, "Reports of Transactions Involving Nationally Tracked Sources." The NRC determined that the guidance was needed until the enforcement manual could be revised to include the topic of dispositioning NSTS violations.

Discussion: The NRC issued the first version of the NSTS EGM on July 31, 2009. The purpose of this EGM is to provide guidance for dispositioning inspection findings related to a licensee's implementation of NSTS requirements. The EGM contains a discussion of the factors that would warrant an exercise of enforcement discretion to issue a Non-Cited Violation (NCV) or a Notice of Violation citing a severity level III or IV violation. The EGM also provides sample inspection report and cover letter language. A revision was made to this EGM on August 28, 2009, to remove an inaccurate example in the escalated enforcement section which stated that a licensee must have a credentialed point of contact. A credentialed person is required for actual use of the internet NSTS database, but credentialing is not needed for a person who is faxing information to the NRC.

A second revision was made to this EGM on March 2, 2011, to add and revise wording to reflect the language used in the NSTS Final Rule, and this revised version is being transmitted in this letter. In the background section, the compliance start date was corrected from January 1, 2009, to January 31, 2009. The section that discusses the dispositioning of violations was revised to emphasize that violations which met the criteria for discretion should be dispositioned as NCVs. Additional language was added to highlight the fact that the violation must be corrected within five business days of the date of discovery. Also, the language in the normal enforcement process section regarding programmatic failures was revised to emphasize that the licensee must have a process to identify and report transactions of tracked sources to NSTS.

This EGM is in effect until further notice.

If you have any questions regarding this correspondence, please contact me at (301) 415-3340, or the individual named below.

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/RA/ by James G. Luehman for

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Enclosure:
EGM-09-007, Revision 2

March 2, 2011

EGM-09-007, Revision 2

MEMORANDUM TO: William M. Dean, Regional Administrator, Region I
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FROM: Roy P. Zimmerman, Director */RA/*
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM - INTERIM GUIDANCE
FOR DISPOSITIONING VIOLATIONS OF NATIONAL SOURCE
TRACKING SYSTEM (NSTS) REQUIREMENTS

Purpose

The purpose of this memorandum is to provide guidance for dispositioning inspection findings related to a licensee's implementation of national source tracking system requirements.

Background

The Energy Policy Act of 2005 contains a provision that required the NRC to issue regulations establishing a mandatory tracking system for radiation sources in the United States. This provision ultimately led to the development of the NSTS. Licensees are required to report transactions of risk-significant radioactive sources from origin (manufacture or import) through transfer (shipment and receipt) to disposition (disassembly, disposal, export, or decay below the level of tracked sources). In accordance with the final rule that became effective on February 6, 2007, each licensee was required to report its initial inventory of Category 1 sources by November 15, 2007. Licensees that possessed Category 2 sources were required to report their initial inventory by November 30, 2007. In addition, compliance with the reporting provisions in 10 CFR 20.2207 was also required by November 15, 2007 and November 30, 2007, respectively. The thresholds for nationally tracked sources are defined in Appendix E of 10 CFR Part 20.

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Since the development and testing of the NSTS took longer than anticipated, the NRC amended its regulations, effective October 19, 2007, to revise the compliance dates for licensees to report initial source inventory information and source transactions to the NSTS (72 FR 59162). Compliance with the reporting provisions in 10 CFR 20.2207 was then required by January 31, 2009, for both Category 1 sources and Category 2 sources.

DISPOSITIONING VIOLATIONS OF NSTS REQUIREMENTS:

If an inspector identifies a potential noncompliance with the NSTS requirements, the inspector shall notify the branch chief responsible for the inspection before the exit meeting with the licensee. All potential non-compliances shall be brought back to the Regional Office for dispositioning.

The Regional Office may choose to exercise enforcement discretion or implement the normal enforcement process.

1. EXERCISE ENFORCEMENT DISCRETION

The Regional Office should use enforcement discretion, barring special circumstances, to issue a non-cited violation (NCV) if all the following conditions are met:

- a. this is the first inspection after the effective date of the NSTS reporting requirements;
- b. the licensee's failure was not willful;
- c. the licensee committed to implementing corrective actions that include both promptly correcting any violations within 5 business days of the date they were discovered during the inspection and instituting a process to avoid future violations.

These cases will be assigned an Enforcement Action (EA) number.

Sample text for the inspection record or report:

The text of the inspection record or report will describe the noncompliance(s) and the licensee's corrective actions. The following language is to be included in the text of the record or report discussing the inspection finding when exercising enforcement discretion in accordance with this EGM.

"A violation of the NSTS reporting requirements (cite the specific violation) was identified during this initial inspection. Since this was the first inspection after the effective date of NSTS reporting requirements, the licensee corrected all reporting errors or missed transactions within 5 business days of the date they were discovered during the inspection as required by 10 CFR 20.2207(g), and the licensee committed to take prompt corrective actions such as: 1) correcting any other reporting errors or missed transactions discovered after the inspection within 5 business days of discovery, and 2) implementing a process for ensuring future reporting complies with NRC requirements, the NRC is exercising enforcement discretion to disposition this violation as a non-cited violation (NCV) in accordance with EGM-09-007. Future violations of NSTS reporting requirements may be categorized as cited violations and evaluated accordingly."

2. IMPLEMENT THE NORMAL ENFORCEMENT PROCESS

The Regional Office will use the normal enforcement process to disposition any violation that does not meet the criteria for enforcement discretion in accordance with this EGM. Typically violations involving isolated failures will be categorized at severity level IV and consideration of escalated enforcement will be appropriate for violations that have direct regulatory and potential security impact which require NRC's action; programmatic issues (e.g., repeat violations and those resulting from the licensee not having an established process to identify and report transactions of nationally tracked sources to the NSTS); and violations involving willfulness. At this time, there will be no distinction in the enforcement of an apparent violation for a late report to the NSTS and an apparent violation for a failure to report to the NSTS.

This EGM will be in effect until further notice.

cc: M. Weber, DEDMRT
M. Virgilio, DEDR
SECY

2. IMPLEMENT THE NORMAL ENFORCEMENT PROCESS

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